IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4531 OF 2006

Mrs Filomina Thomas John .. ..Petitioner

Versus

Mr.Eknath Vaijinath Rankhambe .. ..Respondent

Mr.M.P.Mishra for petitioner

Mr.K.K.Tated for Respondent

CORAM : DR. D.Y.CHANDRACHUD, J.

DATE : 18TH JULY, 2006.

P.C.:

1. The Commissioner of Konkan Division by his order dated 5.6.2006 confirmed the judgment of the Competent Authority allowing the application for the recovery of possession under Section 24 of the Maharashtra Rent Control Act, 1998. Two submissions have been urged in this proceeding.

2. The first submission is that under Section 55 an

agreement of licence requires to be registered in the absence of which the agreement is not admissible in evidence. Now Section 55(1) provides that notwithstanding anything contained in the Act or in any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of the Act, shall be in writing and shall be registered under the Registration Act, 1908. The consequence of non-registration is provided in Section 55(2), which reads thus -

> "55(2). The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise."

In other words, the consequence of non registration is that the contention of the tenant about the terms and conditions on which the premises were given to him by the

landlord shall prevail unless proved otherwise. Therefore, there is no merit in the submission that in the absence of registration, the agreement is per-se inadmissible in evidence. The provisions of sub-section (2) of Section 55 do not support such an interpretation.

3. The question which then arises is as regards the contention of the licensee about the terms and conditions subject which the premises were given to him by the landlord. The contention of the petitioner was that the land in fact belonged to A.H.Wadia Charitable Trust and that the petitioner was a tenant of the Trust. Except a letter by which the Trust had given permission to carry out repairs, the petitioner produced no other evidence to show that the premises belonged to the Trust. The contention of the petitioner was that there was an agreement of sale in respect of the premises between the parties for a consideration of Rs.1,90,000/=. The Competent authority noticed that there was absolutely no documentary evidence relating to the alleged agreement or to the payment thereunder of Rs.1,90,000/=. Moreover, the case of the petitioner was contradictory. On the one hand the petitioner has denied the title of the respondent while on the other hand she has claimed that she has

purchased the suit premises from the Respondent. This contradiction has also been noted by the Addl. Commissioner, Konkan Division. As opposed to the contradictions in the case of the Petitioner, the Respondent in his version deposed that there was an agreement for a period of 11 months by which the premises were granted to the petitioner during the period from 11.4.2000 to 15.3.2001 on a compensation of Rs.1000/= per month. The respondent examined himself as well as a witness to the agreement, who stated that the agreement was prepared in his presence. In these circumstances, the consequence in sub-section 2 of Section 55 stood rebutted by the evidence of the respondent to the contrary.

4. The second submission is that the land on which the premises are situated is declared as slum. Both the authorities below have held that the notification by which the land has been declared as a slum has not been produced. Before this court a notification dated 14.11.1997 is sought to be relied upon, which is annexed at Exh.B. Even that notification does not connect the suit property, to the property which is declared as a slum under the notification.

5. In the circumstances, no case is made out for interference under Articles 227 of the Constitution, the petition stands dismissed.

6. On the request of the learned counsel appearing on behalf of the petitioner, time to vacate the premises is granted for a period of six weeks from today subject to the filing of the usual undertaking within a period of two weeks from today. Undertaking to be filed in this Court.

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